

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRENDA SAWYER,

Plaintiff,

Case No. 17-cv-13948
Hon. Matthew F. Leitman

v.

CONCORD MANAGEMENT, LTD, *et al.*,

Defendants.

**ORDER (1) DISMISSING PLAINTIFF'S CLAIMS AGAINST DEFENDANT
MARATHON EQUIPMENT COMPANY, INC. WITHOUT PREJUDICE
AND (2) TERMINATING AS MOOT MARATHON'S
MOTION TO DISMISS (ECF #22)**

On March 16, 2018, Plaintiff Brenda Sawyer filed a Fourth Amended Complaint in this product-liability action. (*See* ECF #16.) In that pleading, for the first time, Sawyer asserted claims against Defendant Marathon Equipment Company, Inc. (*See id.*) Marathon has now moved to dismiss Sawyer's claims under Federal Rule of Civil Procedure 12(b)(6). (*See* ECF #22.) Sawyer filed a response in which she insisted that her claims are viable. (*See* ECF #23.) In the alternative, she sought leave to amend. (*See id.*) The Court held a hearing on the motion on July 11, 2018. (*See* ECF #25.)

After reviewing the Fourth Amended Complaint and the parties' motion papers, and considering the parties' oral arguments, for the reasons stated on the record at the July 11 hearing, the Court does not believe that Sawyer's pleading states a plausible or viable claim against Marathon. Nor has Sawyer identified any facts that she could add to a Fifth Amended Complaint that, if true, would tend to state a plausible claim against Marathon. However, rather than dismiss Sawyer's claims against Marathon with prejudice, based upon the Court's discussion with counsel, the Court concludes that the proper resolution is to dismiss her claims against Marathon without prejudice.

Accordingly, for the reasons stated in this order, and the reasons stated on the record during the July 11, 2018, hearing on Marathon's motion to dismiss, **IT IS HEREBY ORDERED** as follows:

- Sawyer's claims against Marathon are **DISMISSED WITHOUT PREJUDICE**;
- Marathon's motion to dismiss (ECF #22) is **TERMINATED AS MOOT**; and
- If, as a result of information learned during discovery, Sawyer concludes that she has a good-faith basis to re-assert a claim against Marathon, she may file a motion for leave to amend her then-operative pleading to add such a claim. Sawyer shall serve such a motion on counsel for Marathon, Mr. Stanczyk, and Marathon may file a response to the motion in the time period allowed by the

Federal Rules of Civil Procedure and this Court's Local Rules. If the Court concludes that such a motion is not brought in good faith, it may award sanctions against Sawyer and/or her counsel and in favor of Marathon.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: July 11, 2018

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 11, 2018, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764